

1 November 2023

UKRAINE: Three years' jail for Adventist conscientious objector to mobilisation

By Felix Corley, Forum 18 (<https://www.forum18.org>)

45-year-old Seventh-day Adventist Dmytro Zelinsky is serving his 3-year jail term for refusing mobilisation on grounds of conscience, and is due to arrive soon in a Kolomyia prison. On 28 August, Ternopil Appeal Court acceded to Prosecutor Roman Harmatiuk's request to overturn his June acquittal. Harmatiuk did not respond to Forum 18 to say why he appealed against the acquittal. Zelinsky is preparing a Supreme Court appeal. Courts have handed conscientious objectors 3 prison sentences (2 of them later overturned), 10 suspended prison terms, and 2 acquittals (which prosecutors are challenging). Seven criminal trials continue.

Seventh-day Adventist Dmytro Zelinsky has begun serving his 3-year jail term for refusing mobilisation on grounds of conscience, and is due to arrive soon at a prison in Kolomyia in Ivano-Frankivsk Region. The 45-year-old was acquitted in June, but the Prosecutor appealed. On 28 August, Ternopil Appeal Court overturned the acquittal. It acceded to the request by Prosecutor Roman Harmatiuk and handed Zelinsky a three-year jail term to come into force immediately. Zelinsky is preparing a further appeal to the Supreme Court in Kyiv.

The Recruitment Office rejected Zelinsky's written request to be exempted from mobilisation on grounds of conscience or to be assigned to alternative civilian service "due to the fact that such replacement is not provided for by the current legislation", according to the subsequent court decision (see below).

An official of Kremenets District Recruitment Office – who did not give his name – refused to explain why it refused Zelinsky's application for alternative civilian service. "We give out no such information," the official told Forum 18 (see below).

In her June decision acquitting Zelinsky, Judge Tetyana Klim of Kremenets District Court pointed to Article 35 of the Constitution, which includes the provision: "If the performance of military duty contradicts the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service" (see below).

Judge Klim also noted that a November 2018 Presidential Decree setting out the provisions of martial law did not include any restrictions on rights set out in Article 35, and that various judgments of the European Court of Human Rights in Strasbourg (ECtHR) had defined the right to conscientious objection to military service (see below).

"Therefore, the right of believers to freedom of worldview and religion, which is provided for in Article 35 of Ukraine's Constitution, and includes the right to replace the performance of military duty with alternative non-military service, is not restricted by the above-mentioned Decree of the President of Ukraine," Judge Kim wrote in the verdict. "Other legal acts that would limit such rights even for the present time - in the conditions of martial law - do not exist" (see below).

Forum 18 tried to find out why Prosecutors chose to appeal against Zelinsky's acquittal. Ternopil Regional Prosecutor's Office would not put Forum 18 through on 1 November to Prosecutor Harmatiuk, but said it would ask him to call Forum 18. He did not call back that day (see below).

Since Russia's renewed invasion of Ukraine in February 2022, courts have handed down three prison sentences (two of them later overturned), at least ten suspended prison terms, and two acquittals (which prosecutors are challenging). At least seven criminal trials continue (see list below).

Prosecutions of others refusing mobilisation on grounds of conscience continue. In Mykolaiv Region, a court handed Artyom Kravtsov, a Baptist, a 4-year suspended sentence. In Transcarpathia Region, a court handed Volodymyr Ukhal, a parishioner of the Ukrainian Orthodox Church, a 4-year suspended sentence. In Ivano-Frankivsk, a court changed Mykhailo Yavorsky's one-year prison term into a 3-year suspended sentence (see below).

Yavorsky, a Christian, said he will not appeal further to the Supreme Court. "I won't win anything, except that they can really put me down," he told Forum 18. "The problem is that we don't have a law on alternative service during the war, there is no way to justify

yourself" (see below).

The second trial has begun in Ivano-Frankivsk of Vitaly Alekseenko, a Christian. A court sentenced him originally to a one-year jail term, but the Supreme Court overturned this in May and ordered his immediate release from prison, where he had spent three months. The new trial is due to resume on 15 November (see below).

Prosecutors from Tyachiv District Prosecutor's Office appealed against two acquittals of Jehovah's Witnesses. Transcarpathia Appeal Court is hearing both appeals. An official from the Prosecutor's Office – who did not give his name – refused to discuss with Forum 18 why it had appealed against the acquittals. Prosecutor Yaroslav Nitka – who lodged one of the appeals - likewise refused to say. "The court is going to make the decision and I cannot discuss the case," he told Forum 18 (see below).

Six other Jehovah's Witness men are on trial for refusing mobilisation on grounds of conscience (see below).

Three jail terms (two overturned), nine suspended sentences, two acquittals, seven trials

After Russia's renewed invasion of Ukraine began in February 2022, Ukraine declared a state of martial law. All men between the ages of 18 and 60 were deemed eligible for call-up in a general mobilisation and were banned from leaving the country. Ukraine's Defence Ministry insists that even the limited alternative service allowed in peacetime does not exist during wartime (https://www.forum18.org/archive.php?article_id=2830).

Those who refuse mobilisation on grounds of conscience face prosecution under Criminal Code Article 336 ("Refusing call-up for military service during mobilisation or in a special period, and for military service during call-up of reservists in a special period"). The punishment is a jail term of three to five years.

In criminal cases since February 2022, courts are known to have handed down three jail terms:

- 15 September 2022, Vitaly Alekseenko, Ivano-Frankivsk, one-year jail term (overturned by Supreme Court and sent for new trial – see below);
- 6 April 2023, Mykhailo Yavorsky, Ivano-Frankivsk, one-year jail term (changed to suspended sentence on appeal – see below);
- 28 August 2023, Dmytro Zelinsky, Ternopil, three-year jail term (currently imprisoned – see below).

Courts are known to have handed ten conscientious objectors suspended prison sentences (https://www.forum18.org/archive.php?article_id=2836) and terms of probation:

- 18 May 2022, Andrii Kucher, Mukachevo, suspended 4-year jail term;
- 21 June 2022, Dmytro Kucherov, Oleksandriia (Kirovohrad Region), suspended 3-year jail term;
- 17 August 2022, Oleksandr Korobko, Mukachevo, suspended 3-year jail term;
- 22 August 2022, Maryan Kapats, Mukachevo, suspended 3-year jail term;
- 2 December 2022, Andrii Martiniuk, Snyatin (Ivano-Frankivsk Region), suspended 3-year jail term;
- 3 February 2023, Hennady Tomniuk, Ivano-Frankivsk, suspended 3-year jail term (which the prosecutor failed to turn into a prison sentence on appeal);
- 5 September 2023, Roman Vengerov, Tulchyn (Vinnitsa Region), suspended 3-year jail term;
- 2 October 2023, Mykhailo Yavorsky, Ivano-Frankivsk, suspended 3-year jail term (changed from one-year jail term – see below)
- 19 October 2023, Artyom Kravtsov, Pervomaisk District (Mykolaiv Region), suspended 4-year jail term – see below;
- 24 October 2023, Volodymyr Ukhal, Tyachiv, suspended 4-year jail term – see below.

Courts are known to have handed down two acquittals:

- 20 March 2023, Jehovah's Witness, Tyachiv (which the prosecutor is appealing against – see below);
- 24 May 2023, Jehovah's Witness, Tyachiv (which the prosecutor is appealing against – see below).

Courts are known to be hearing seven cases – see below:

- Ivano-Frankivsk, Vitaly Alekseenko (first conviction overturned);
- Ternopil, Jehovah's Witness;
- Chortkiv (Ternopil Region), Jehovah's Witness;
- Poltava, Jehovah's Witness;
- Boryspil (Kyiv Region), Jehovah's Witness;
- Boryspil (Kyiv Region), Jehovah's Witness (second case);
- Chuhuiv (Kharkiv Region), Jehovah's Witness.

Investigators are also considering criminal cases against other Protestant and Jehovah's Witness men.

Ternopil Region: Dmytro Zelinsky's 3-year jail term

Dmytro Bronislavovich Zelinsky (born 16 March 1978) performed military service between 1996 and 1998. In 2002 he was baptised as a Seventh-day Adventist in Lysychansk in Luhansk Region. He left his job as a police officer when he joined the Church, as he regarded it as incompatible with his new faith.

Zelinsky fled from Luhansk Region after Russia's full-scale invasion of Ukraine in February 2022 and was registered as an internally-displaced person in Kremenets in Ternopil Region in July 2022. He attended Seventh-day Adventist meetings for worship in Kremenets from spring 2022, Pastor Bohdan Osadchuk, who has led the church since May 2022, told Forum 18 on 31 October 2023.

Zelinsky also served as a volunteer in the charity Dawn of Hope, which works with children with disabilities.

On 21 July 2022, a military medical commission deemed Zelinsky fit for military service. On 9 September 2022, Kremenets District Recruitment Office ordered him to arrive for military service two days later. Zelinsky told officials verbally that he would not be able to serve in the armed forces on grounds of conscience, Pastor Osadchuk told Forum 18.

Stanislav Nosov, President of the Seventh-day Adventist Church in Ukraine, describes Zelinsky as a "good man" who he has known since 2016. "Only on the third meeting did Dmytro explain to the Recruitment Office in writing that as a Seventh-day Adventist he is unable to serve in the armed forces on grounds of conscience," he told Forum 18 from Kyiv on 31 October 2023. "But it was a stressful situation for Dmytro."

The Recruitment Office and Prosecutors later insisted that Zelinsky submitted no request for either exemption from mobilisation on grounds of conscience or to be assigned to alternative civilian service.

Zelinsky did not arrive to be mobilised as ordered on 11 September 2022. Prosecutors opened a case against him under Criminal Code Article 336 ("Refusing call-up for military service during mobilisation or in a special period, and for military service during call-up of reservists in a special period").

In March 2023, Zelinsky renewed his request to Kremenets District Military Administration – this time in writing - to be exempted from mobilisation on grounds of conscience or to be assigned to alternative civilian service. This request was refused "due to the fact that such replacement is not provided for by the current legislation", according to the subsequent court decision.

An official of Kremenets District Recruitment Office – who did not give his name – refused to explain why it refused Zelinsky's application for alternative civilian service. "We give out no such information," the official told Forum 18 on 1 November.

On 5 June, Judge Tetyana Klim of Kremenets District Court acquitted Zelinsky of violating Criminal Code Article 336, according to the verdict seen by Forum 18. The Judge pointed to Article 35 of the Constitution, which includes the provision: "If the performance of military duty contradicts the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service."

Judge Klim also noted that a November 2018 Presidential Decree setting out the provisions of martial law did not include restrictions of rights set out in Article 35, and that various judgments of the European Court of Human Rights (ECtHR) in Strasbourg had defined the right to conscientious objection to military service (https://www.echr.coe.int/documents/d/echr/guide_art_9_eng).

"Therefore, the right of believers to freedom of worldview and religion, which is provided for in Article 35 of Ukraine's Constitution, and includes the right to replace the performance of military duty with alternative non-military service, is not restricted by the above-mentioned Decree of the President of Ukraine," Judge Kim wrote in the verdict. "Other legal acts that would limit such rights even for the present time - in the conditions of martial law - do not exist."

Forum 18 was unable to reach Judge Klim at Kremenets District Court on 1 November.

Pastor Osadchuk testified as a witness in court, but told Forum 18 that the verdict did not accurately record information he gave about Zelinsky.

Prosecutor Oleksandr Yanyuk appealed against the acquittal to Ternopil Appeal Court. On 28 August, a panel of three Judges at Ternopil Appeal Court chaired by Irina Lekan overturned the acquittal. They acceded to the request by Prosecutor Roman Harmatiuk and handed Zelinsky a three-year jail term to come into force immediately, according to the verdict seen by Forum 18. Zelinsky was given three months to lodge a further, cassational appeal.

Ternopil Regional Prosecutor's Office would not put Forum 18 through on 1 November to Prosecutor Harmatiuk, but said it would ask him to call Forum 18. He did not call back by the end of the working day in Ukraine of 1 November.

Zelinsky's lawyer Petro Korf said Zelinsky is preparing to appeal against his conviction and jail term to the Supreme Court. The lawyer added that Zelinsky will take his case to the European Court of Human Rights in Strasbourg if necessary.

Zelinsky due to be sent to Prison No. 41

Officials took Dmytro Zelinsky into custody in mid-September, Korf told Forum 18 on 23 October. Officials took Zelinsky to various prisons, before allocating him to Prison No. 41 in Kolomyia in Ivano-Frankivsk Region, where he is due to be transferred soon. This is where conscientious objector Vitaly Alekseenko was held earlier in 2023 (see below).

An inspection of Prison No. 41 by the National Preventive Mechanism attached to the Ombudsperson's Office noted the death of a prisoner, "excessive use of force on prisoners by staff of the institution, as well as forcing the convicts to stand during the entire time of the air raid warning signal". The 7 March report of the visit (https://www.ombudsman.gov.ua/news_details/vidviduvannya-du-kolomijska-vipravna-koloniya-41) also noted "violations of the right to privacy, violations of the temperature regime, unsanitary conditions, excessive humidity and wear and tear of bedding".

Prisoner of conscience Zelinsky's address in prison will be:

78250, Ivano-Frankivska obl.

Kolomiisky raion

Selo Tovmachik

Vul. Privokzalna bud. 30

Kolomiiska vipravna koloniya No. 41

Ukraine

Mykolaiv Region: Artyom Kravtsov's 4-year suspended sentence

Artyom Mikolaiovich Kravtsov (born 1993) lives in the village of Ternuvate in Pervomaisk District of Mykolaiv Region. He joined a Baptist church in the village in April 2019 and was baptised later that year. The small congregation is linked to the church in Pervomaisk, which is part of the Baptist Union.

On 13 April 2022, a military medical commission found Kravtsov fit for mobilisation. On 10 September 2022, Recruitment Office officials summoned him for mobilisation two days later.

Kravtsov explained during his trial how he had set out his objection to mobilisation. "He explained that his religious beliefs do not allow him to use weapons," the subsequent verdict quotes him as declaring. "He repeatedly pointed this out to the Recruitment Office and brought it to the attention of the Recruitment Office officials that the performance of military duty contradicts his religious beliefs. He provided a certificate from the Church to confirm the relevant circumstances."

A regional Baptist Union leader confirmed to Forum 18 that the church in Pervomaisk had provided all needed documents to

confirm Kravtsov's membership of the church. He stressed that Kravtsov's decision to refuse mobilisation on grounds of conscience was a personal decision.

On 19 October, Judge Olena Repushevska of Kryve Ozero District Court found Kravtsov guilty under Criminal Code Article 336 ("Refusing call-up for military service during mobilisation or in a special period, and for military service during call-up of reservists in a special period").

"The court does not accept the explanation of the accused Kravtsov that his membership in the Church of Evangelical Christian Baptists, whose religious beliefs do not allow the use of weapons, entitles him to be exempted from conscription for military service during mobilisation," the verdict notes.

Judge Repushevska handed Kravtsov a four-year jail term suspended for three years, according to the decision seen by Forum 18.

This means that Kravtsov will not need to go to jail unless he commits another crime – or if the Prosecutor successfully appeals against the verdict.

Forum 18 was unable to reach Judge Repushevska at Kryve Ozero District Court on 1 November.

Transcarpathia Region: Volodymyr Ukhal's 4-year suspended sentence

Recruitment Officers stopped Volodymyr Volodymyrovich Ukhal (born 1992) on 19 January as he drove to work. They took him to a military medical commission, which deemed him fit for mobilisation. At the Tyachiv District Recruitment Office in Transcarpathia Region, officials issued him with a mobilisation notice, which he refused. He submitted a written request for alternative civilian service on grounds of conscience, but the Recruitment Office rejected this.

On 20 January, Fr Ioan Dovbnych of St George's Ukrainian Orthodox Church in the village of Kalyny submitted confirmation to the Recruitment Office that Ukhal is a regular parishioner.

Officials at Tyachiv District Recruitment Office did not answer their phones when Forum 18 called on 1 November.

A Tyachiv District Prosecutor's Office official – who did not give his name – refused to discuss the case against Ukhal with Forum 18 on 1 November.

On 24 October, Judge Mykola Branich of Tyachiv District Court found Ukhal guilty under Criminal Code Article 336 ("Refusing call-up for military service during mobilisation or in a special period, and for military service during call-up of reservists in a special period"). "The court found that the accused's explanation of his refusal to mobilise due to religious beliefs does not disprove his guilt in committing the crime provided for in Criminal Code Article 336," the verdict seen by Forum 18 notes.

The verdict claims that Ukhal's request for alternative civilian service "is considered by the court to be his chosen method of defence, and given to avoid criminal liability or reduce such liability".

The Judge handed Ukhal a four-year jail term suspended for three years. This means that he will not need to go to jail unless he commits another crime or three administrative offences – or if the Prosecutor successfully appeals against the verdict.

Forum 18 was unable to reach Judge Branich at Tyachiv District Court on 1 November.

Ivano-Frankivsk: Mykhailo Yavorsky's prison term changed to 3-year suspended sentence

Mykhailo Yosypovych Yavorsky (born 3 June 1983), a Christian from Ivano-Frankivsk, was handed a one-year jail term (https://www.forum18.org/archive.php?article_id=2829) for refusing mobilisation on grounds of conscience. On 6 April Ivano-Frankivsk City Court handed down the sentence under Criminal Code Article 336 ("Refusing call-up for military service during mobilisation or in a special period, and for military service during call-up of reservists in a special period").

On 20 April, Yavorsky again asked in writing for alternative civilian service. The Recruitment Office rejected this on 29 April.

Yavorsky lodged an appeal on 8 May (https://www.forum18.org/archive.php?article_id=2830) against his jail term. The prosecutor also appealed, seeking to have the one-year jail term increased to three years.

Ivano-Frankivsk Appeal Court began hearing the appeals on 12 June (https://www.forum18.org/archive.php?article_id=2836).

After a change in the Prosecutor, with Yevhen Zhuravlyov taking over the prosecution case, on 2 October the panel of three Judges at Ivano-Frankivsk Appeal Court, chaired by Judge Volodymyr Povzlo, changed the one-year prison term to a three-year prison term suspended for one year, according to the verdict seen by Forum 18.

Forum 18 was unable to reach Judge Povzlo at Ivano-Frankivsk Appeal Court on 1 November.

The Prosecutor pointed out that the City Court had regarded as a mitigating factor for Yavorsky "the presence and upbringing of the accused's two minor children, the accused's state of health, as well as the accused's many years of deep religious beliefs". The Prosecutor rejected this, saying that he "did not conclude at all that these circumstances significantly reduce public danger".

"One year of probation means that I am free, but if I have 1 criminal act, or 3 civil ones, then I will immediately go to prison for at least 3 years," Yavorsky told Forum 18 on 27 October.

Yavorsky said he will not appeal further to the Supreme Court. "I won't win anything, except that they can really put me down," he told Forum 18. "The problem is that we don't have a law on alternative service during the war, there is no way to justify yourself."

Ivano-Frankivsk: Vitaly Alekseenko's second trial

Christian conscientious objector Vitaly Vasilovich Alekseenko (born 2 December 1976) is now on trial for a second time for refusing mobilisation on grounds of conscience. His requests to perform an alternative civilian service have been ignored.

On 25 May, Ukraine's Supreme Court overturned Alekseenko's conviction and one-year jail term (https://www.forum18.org/archive.php?article_id=2836). It ordered his release from prison, where he had been held since February. He was freed the same day and returned to his home in the south-western city of Ivano-Frankivsk. However, the Supreme Court ordered a retrial in the original court over his refusal to be mobilised.

After Alekseenko's release from prison he found it difficult to get a job. After getting legal advice, he eventually managed to get a job delivering letters.

The second case against Alekseenko under Criminal Code Article 336 ("Refusing call-up for military service during mobilisation or in a special period, and for military service during call-up of reservists in a special period") was again handed to Ivano-Frankivsk City Court. The case was assigned to Judge Ivanna Kovalyuk.

On 3 October, Judge Kovalyuk rejected Alekseenko's petition for the case to be sent back to the Prosecutor's Office. The full second trial began on 9 October. The next hearing is due on the morning of 15 November. Alekseenko is represented only by a state-appointed lawyer, he told Forum 18.

Forum 18 was unable to reach Judge Kovalyuk at Ivano-Frankivsk City Court on 1 November.

Prosecutors challenge two acquittals

In two cases in 2023, Tyachiv District Court in Transcarpathia Region acquitted Jehovah's Witnesses (https://www.forum18.org/archive.php?article_id=2836) under Criminal Code Article 336 ("Refusing call-up for military service during mobilisation or in a special period, and for military service during call-up of reservists in a special period"). The two men had refused mobilisation on grounds of conscience and both had expressed a readiness to perform alternative civilian service.

"In court, saying the last word, both men asked the court to acquit them as this would allow them to serve the needs of the Ukrainian society," Jehovah's Witnesses told Forum 18 on 30 October. "They said that imprisonment would signify that they are punished not for a crime but for their beliefs."

Prosecutors from Tyachiv District Prosecutor's Office (Igor Kasinyuk in the first case, Yaroslav Nitka in the second) appealed against both the acquittals, according to court records. A Prosecutor's Office official – who did not give his name – refused to discuss with Forum 18 on 1 November why it had lodged appeals against the acquittals. Prosecutor Nitka likewise refused to say. "The court is going to make the decision and I cannot discuss the case," he told Forum 18 the same day.

In the first case, Judge Mykola Branich of Tyachiv District Court acquitted the individual on 20 March 2023 (https://www.forum18.org/archive.php?article_id=2836). The prosecutor's appeal was due to be heard by a panel of Judges at Transcarpathia Appeal Court, chaired by Judge Ivan Feer, on 5 September, but was postponed until 25 January 2024.

In the second case, Judge Miroslav Stetsyuk of Tyachiv District Court acquitted the individual on 24 May 2023 (https://www.forum18.org/archive.php?article_id=2836). The prosecutor's appeal is due to be heard by a panel of Judges at Transcarpathia Appeal Court, chaired by Judge Ivan Feer, on 21 November.

Six Jehovah's Witnesses on trial

Courts have begun trials in five other locations (https://www.forum18.org/archive.php?article_id=2836) against six more Jehovah's

Witnesses under Criminal Code Article 336 ("Refusing call-up for military service during mobilisation or in a special period, and for military service during call-up of reservists in a special period"). All six had refused mobilisation on grounds of conscience and offered to perform alternative service.

Five of the trials – in Ternopil, Poltava, Chortkiv (Ternopil Region) and two in Boryspil (Kyiv Region) – have had regular hearings. In the sixth trial, in Chuhuiv (Kharkiv Region), no hearings have taken place since an initial hearing in April.

All the men told Recruitment Offices that they are prepared to perform an alternative civilian service. "They clearly state that they want to bear the burden of war along with others and respectfully ask the state to allow them to undertake civilian works that do not conflict with their convictions," Jehovah's Witnesses told Forum 18 on 30 October. (END)

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